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WELLINGTON FL 33414

DEC 05 2007

**OFFICE OF PETITIONS**

In re Application of	:	
Joseph Smith	:	
Application No. 10/619,534	:	ON PETITION
Filed: July 16, 2003	:	
Title: Anatomically Configured	:	
Device for Orthopedic Support of		
the Body		

This is a decision on the petition to revive under 37 CFR 1.137(a), filed November 15, 2007.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to file a reply to the non-final Office action mailed March 20, 2007. This Office action set a shortened statutory period for reply of three (3) months. No reply having been received, the application became abandoned on June 21, 2007. A Notice of Abandonment was mailed on September 28, 2007.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 CFR 1.17(l); and (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable. The instant petition lacks item (2).

The petition fee required for a petition to revive is required for the filing, not merely the grant, of the petition.<sup>1</sup> Accordingly, before the petition can even be considered on the merits, applicant must submit the petition fee, currently \$255 for a small entity.

Where applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), then applicant should file a petition under 37 CFR 1.181 to withdraw the holding of abandonment. There is no fee for such a petition. Where there is no dispute as to whether an application is abandoned (e.g., applicant's contentions merely involve the cause of the abandonment), then applicant should file a petition to revive under 37 CFR 1.137(a) (unavoidable delay - \$255 petition fee) or 37 CFR 1.137(b) (unintentional delay - \$770 petition fee).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

By FAX: (571)273-8300  
Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

  
Cliff Congo  
Petitions Attorney  
Office of Petitions

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<sup>1</sup> See MPEP 711.03(c)(II)(B).